



1975

Fragile Coalition Interviews - Corrected Transcripts - Thornton

M. Caldwell Butler

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*Harnton corrected group transcript
copied only pages with corrections*

Tape I, pl6

RT - There are two things that I should mention about the flow of information both ways. It relates peripherally to this. I remember so well the statement you [JM] made one time, either in a caucus or in a group meeting of a number of Democrats, that it was going to be crucial exactly what abuses were identified and the language which was used to describe what the offenses were—that getting a correct structure together was going to be a decisive thing. You did not indicate which way you would view it, but that you were going to have that kind of test. I followed some of that language and on the 19th I used the phrase that it depended upon the structure of words being created. We were all fumbling for that. I talked with Sarbanes and Don Edwards and other people who were on the drafting committee and outlined the same concerns that some of us had — the abuse of power and the obstruction of justice. So they were aware, I think, as this was going on of the things that were troubling Walter and you, and me and others.

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(JM)

WF - You ought to remember, I think, the Democratic caucus meetings, which I described to this group as group therapy sessions where they would try to make sure that everybody's thinking the same way—"aren't they ..."—and it was obvious they were trying to bring us three along with them. The whole purpose of the meeting was to get us to go along with their way of thinking.

RT - But we all shared a great many ideas in the preliminary drafting. I know that I did, for I was just floundering, and no structure of words had appeared. I was trying to reach some and now we were all approaching it together.

JM - In effect we were saying that we were not going to accept any radical language or unprovable assertions—that type of approach.

HF - In other words, after we got the Doar book with variations of articles of impeachment, you, Ray, and you, Jim, independently of each other, just took it upon yourselves to start drafting?

(I said - or nodded - yes)

JM - Monday morning I met in my office with Bill Blunt, whom I had borrowed from Tom Geddes, a political science professor from Winthrop College, who was up here as an intern.

WF - I think he was with us at that lunch deal with the Newsday guy.

JM - Yes, he was. He and I were talking then about drafting articles and on Monday morning he and John Labowicz of the impeachment staff met with me in my office early and I left him in my office all day, scattered all out on the floor and working on articles during all that day. There's where I got my draft of an article that I had Tuesday morning when we met. As a result of their efforts I had started.

HF - Lucky for us you had that initiative.

JM - Well, I don't know.

TR - One thing we have not emphasize enough is the fact we rejected John Doar's and Jenner's articles. I remember that really interested me to the extent that I thought we should write them. I thought that they were guilty of overkill.

CB - Absolutely.

HF - Don't you remember everybody commenting that we really had to reduce and refine these subsections of any article down to things that were absolutely sure and provable and direct. We used the phrase that we cannot have something where you might show three or four pieces of evidence that supported it and someone else come forth with three or four pieces of evidence that confuted it. That kind of thing we just couldn't have.

TR - Sure.

WF - That is what we meant by the lowest common denominator; we didn't minimum charge. We meant the absolute minimum, iron-clad provable. We wanted to document it one at a time. If we're going to impeach the President, it was going to have to be on some God-awful charge he had done something big and enormous and terrible. It had to be a telescoped vision rather than a wide-angled camera.

TR - Sure.

CB - I don't think we wasted five minutes on agency. Everybody agreed this sort of thing was out of it.

TR - I recall a little different from that. I think you could have bought superintendancy, couldn't you, or could you [RT]? You were about the only one.

RT - ~~perhaps, though~~ I thought the offense stemmed from the top - on the other question, I do agree that it never raised itself to any point of consideration that the person in line for succession was a non-elected vice-president; however, I do think it would have increased ~~the~~ burden, the psychological burden on me, if we had been dealing with the situation whereby impeaching the President, a Democratic speaker of the House was going to succeed, ~~I think that would have had an effect to the office of President.~~

WF - What if Agnew was still vice-president? What would have that done to us?

CB - That would have lessened the burden some of us had.

TR - It would have been different.

DS - Getting back to the point that Walter was making before about the lowest common. provable denominator. If you were so concerned about getting a provable case, how is it that three days later the specificity thing caught everybody seemingly by surprise?

Tape II, p14

TM - You will recall that on Wednesday we got a call from Frank Polk. He said, "I am working on the draft of article two, or something for McClory." I went out and took that message.

WC - You mean article three.

TM - It was McClory's own article two.

JM - McClory has a letter dated July 25th, sending a copy to Caldwell Butler, and I'm sure to others too. That was Thursday, even before we got back to article one.

TM - There was a discussion whether or not to include Mr. McClory or ask him to join the group. It decided to send him a draft; I believe Jimmy Butler attended that meeting.

WF - Yes, your son was there.

CB - He carried over the McClory copy and he was greatly offended when McClory didn't come out and get it himself, some guy grabbed it out of his hands.

WF - Why did you guys want McClory to come down?

TR - The more the merrier for us.

CB - I think we analyzed the situation and felt that he wouldn't make any positive contribution to the deliberations.

[DELETED here are six individual comments on McClory].

TM - Going down page 5, look at C-2, the Watergate Special Prosecution Force. My recollection of the first meeting is that Mr. Thornton brought this up and then we didn't have it until draft 5.

RT - I believe that was in my original draft.

WF - What do you mean by Watergate Special Prosecutor?

RT - The obstruction of Cox's efforts to investigate the Watergate matter and the concern about his discharge and the other activities in October. It was a part of a pattern that I did see that you mentioned a moment ago as being a continuing obstruction of justice and abuse of power which I did view as constituting a threat to our system of government, which required that proceedings be brought. In that regard, my original idea was to have a single article. That was, I believe, discussed by others too. I did think, Bill, that it was more appropriate to have the final element, that of the failure to comply with the committee's subpoena, as a part of either the obstruction of justice or the abuse of power. And if you recall, as it finally turned out, I made an effort to tie it back to article one by amending that article. The reason for Watergate was that it was part of the continuing pattern that I thought was important.

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Tape II, pl5

- TM - There was some discussion about that at first; you wanted to make coverup and continuing coverup a part of it.
- RT - It relates to the idea that I had that the nature of the process of impeachment was a safety valve to protect our system of government. That was the reason we had to go thru it: the danger was still there and ~~that~~ it was continuing.
- TM - Back up just a moment to B-3 on page 5, wherein we talked about judicial proceedings and eventually about congressional proceedings. I recall a discussion about what we meant by judicial proceedings and we talked about the grand jury, the trouble of connecting a President up directly with the grand jury. Obviously he never appeared before it, but the group, I think, spent a considerable amount of time in talking about, "Can we link him directly in these instances of counselling false testimony?" There was some hesitancy to include "congressional proceedings." It got in there, but I think the group convinced itself that "judicial proceedings" was the proper term.
- WF - We came around to "congressional" on the basis of co-equal branches and the fact that we certainly occupied the same status as judicial proceedings, in fact an even higher one.
- CB - We talked about the counselling of McGruder to perjure himself with reference to the Senate Watergate hearings.
- JM - That's right.
- TR - Yes.
- HF - When you say "congressional," you were referring definitely to the Senate Select Committee?
- CB - Right.
- WF - We added "approving, condoning, and acquiescing in" because we weren't sure that he had counselled, but darn sure approved and condoned.
- TR - Exactly.
- WF - In terms of what we had in his discussion with Dean of September 15th.
- HF - The giving forth of misleading statements to investigative offices is followed by an "or," and I think that in the first part we were thinking of Peterson.
- RT - Yes.
- HF - Getting information in the oval office and transmitting it.

Tape III, p2

TR - Now you are talking about knowledge, that's different. If he knew about it, then, as far as I am concerned, he had a duty.... I think what we did was just the opposite. When you are talking about a President, when you are talking about impeaching somebody, throwing him out, instead of being reelected, I don't think that you can hold a guy responsible who did not have any knowledge, did not condone. [?]

HF - But it's still obstruction of justice.

TR - Now wait a minute. There is a distinction where he has knowledge, or condones or approves.

WF - I think we put an affirmative duty on him "to take care." If a guy is going to hold himself out and be President of the United States, he has got some obligations, some affirmative obligations.

CB - You [TR] didn't state it that strongly.

TR - I guess I didn't.

RT - I think it is interesting that here there is a flow, just looking back thru the drafts. The words "course of conduct" that are used thru draft 5, and with draft 6, the word is "policy."

TR - That's Doar. We wouldn't accept that.

RT - But the interesting thing is that since the Railsback amendment was introduced, it did contain a "plan" in the disjunctive.

TR - That "plan" was throwing out a bone, to be quite honest, as far as I was concerned. I didn't even want "plan" in there. We agreed with "plan" in the disjunctive "or plan." It was strictly throwing them a bone.

RT - Their position was that it would be important to be able to prove bad, malicious motive — a malum — ^{mens rea} on the part of the President, and that there had to be more than just a course of action theory. That had to be premeditation. That is what they wanted and that is why "plan" more satisfied their position and yet did not offend your position.

TR - Yeah, with the disjunctive.

WC - As I recall, when you introduced that and Wiggins and Dennis jumped on it, you actually yielded to me to explain how come you used the word "plan." As I recall I tried to bail you out on that and said, "You used the word 'plan' because that is the word the President used in the edited transcripts."

TR - Sure, a very, very good job. I just read that last night. You did a good job tying that language into the edited transcripts.

Tape IV, p7

WF - You didn't have a vote on St.Clair's participation.

TR - Yeah, I know this.

WF - We were with you all the way.

TR - I know you were. We had plenty debate about it, and I had discussions with Peter Rodino.

WC - The questions of whether he could also go the depositions....

TR - That is another one.

CB - They abandoned depositions, so that wouldn't be....

TR - Probably one of the biggest mistakes was his adamant position on calling four witnesses, instead of letting St.Clair leeway. I voted with you, but St.Clair was, in my opinion, just completely reasonable on everything he did. He didn't want much time, he took two hours when they took, hell, I don't know how many hours presenting their thing. St.Clair was, I thought, just, and then when he did finally get his right to call witnesses, he called eight or something like that. We will go back and there were many, many points. I'll tell you, Peter Rodino, to his credit, and all of you guys, and Walter almost always, and the sensible Democrats backed off on procedural questions.

WC - It's true.

WF - That is why it was so dumb to get wrapped up in them.

TR - You were smart enough to see when it was gonna be a real dispute. It could have been a party thing.

It turned out to be ??
RT - [^]Quite the contrary. ..

WF - That's the worst thing in the world for my political position, and I know for Ray and Jim too.

JM - The more strongly partisan you were the less you wanted it to appear so.

TR - Yeah. The right to cross-examine was another one. I got into it with Kastenmeier whether we meant that when we questioned the right to cross-examine [?]. I argued that we did, because I'd asked Jenner, "Does that statement have anything in there that prevents a person from cross-examining?" He said, "Of course not."

WF - You all think that our staff did what they should have in the way of investigation?

TR - Not at all.

CB - They didn't have enough manpower.

LAUGHTER.

Tape V, p2

JM - That's right.

TM - In your book, it is number 2. The Donahue draft is 2. This may be what you handed out Wednesday, before we went into the committee room at 7:30.

JM - Yes, that was on the bottom of the resolutions, wasn't it?

TM - About ahlf an hour before that you did hand us something.

JM - Well, I don't recall.

TM - You gave it to us somewhat reluctantly, as I remember. You were not sure that you wanted to do that. You did say, "Here is a rough draft of article II."

JM - All right. Generally you will notice these drafts do have a date and later on, as things heated up, a time. That indicates that they were done at the impeachment staff offices. John Labowicz and Bill Blunt, after going over the latest draft with me in my office when I would return from one of our meetings, would then go over to the impeachment headquarters. John Doar and I had frequent discussions as I brought back from you any suggestions pertaining to eliminations. He would try to implement. I never had any problem with him asserting himself on any points, except one or two isolated ones, like we discovered yesterday on that business of making "his policy," certain things that he considered essential to sustain the level of an impeachable offense. But basically it just was drafting. One other major point of difference that he and I maintained throughout was the question of the inclusion of the subpoena contempt as part of article II, rather than as a separate article. As I recall, that was the only point of difference that was ever discussed with any other group, and it was mentioned once or twice at the time of the little Democratic caucus meetings in Ziefman's office. I remember one morning in particular, in giving a progress report, there was concern how that should be handled and his opinion whether it should be second [?].

WF - We all wanted it to be a part of II also, even you, Ray.

RT - Oh, yes.

WF - Even tho you ended up voting for it as article III.

RT - Yes, at the time of the vote, I expressed a preference that it be inserted as part of article II.

JM - Well, that is not exactly correct. I'd say we wanted it to be a part of article II, but you were prepared to strike it earlier. You recall the first day we had a discssion, you [WF] and Ray in particular.

RT - I think that may be right. (We didn't like it at all.

He

Tape V, p4

- WF - Congress and gotten the authority, rather than the courts; we were really acting with Rodino's subpoena, and it wasn't the whole Congress speaking except by agency there.
- TR - That's right.
- CB - We wrote him a letter.
- TR - That doesn't make any difference.
- WF - I retrospect, I think I would say that it is well that there was an article voted there.
- RT - If I may speak to that, because it seems to me an important part of the continuing violation as I saw it. The President even at the time that we were deliberating this was still in a position of not complying with a lawful request by the committee constituted to conduct this inquiry. And I think as a general matter in a legislative inquiry into the executive, that it might be appropriate to test it in the courts. But the function of an impeachment inquiry is a different ballgame; there you are dealing with the very roots of our constitutional system and there is no other court involved in that decision, and what the legislative body is doing there is not a legislative function. It is a basic constitutional function and therefore its inquiry, if grounded upon an investigation which is to an impeachable offense, itself I think should be enforced by that body in order to get that information. Otherwise, you frustrate the constitutional procedure.
- WF - Basically, there was no court high enough to have jurisdiction.
- WC - That was the question that was raised as to where there is a right of appeal from the impeachment proceeding, and the only one who came down in favor of that was Raul Berger in his book.
- TR - He said perhaps there might be a right of appeal.
- WC - Berger argued very clearly there was.
- RT - In retrospect, the amendment that I introduced on that morning, which was a last-minute drafting exercise in my office just before coming over there, I did think satisfactorily tie article III to articles I and II. It said, "the subpoenaed papers and things were deemed necessary by the committee in order to resolve by direct evidence fundamental factual questions relating to presidential directions, knowledge, or approval of actions demonstrated by other evidence to be substantial grounds for impeachment of the President." So you're tying in the function of the subpoena directly to impeachable offenses. And "then" in refusing to produce these things Richard M. Nixon, substituting his judgment as to what materials were necessary for the inquiry, interposed the powers of the presidency against the lawful subpoenas of the House of Representatives, assuming to himself functions and judgments necessary to the exercise of the sole power of impeachment."

Tape V, p8

TR - Who is going to decide that?

RT - The Congress.

HF - The House.

TR - Who normally interprets the Constitution?

RT - The court does, but the court doesn't in cases of impeachment, because impeachment may include the court itself. What if you are impeaching the Chief Justice of the United States, instead of the President? Would you refer the exercise of the power of subpoena to this court? to the White House?

WF - To the executive branch? I agree with Ray there.

CB - Even in this instance we hadn't gone that far. We hadn't gone to all the processes.

RT - That is literally the legal argument: whether we had exhausted all the processes.

TR - We had not, clearly.

CB - That's right.

WC - Doesn't the person, before he can be cited for contempt, have an opportunity to go before the House?

TR - Yes, to make a statement.

HF - The time, you remember, when we talked about contempt, we figured it would delay proceedings a year, a year and a half.

TR - All the safeguards normally accorded to a criminal defendant do the same thing.

HF - But as a practical matter, we were reluctant to put it off.

TR - As a practical matter, we should knock ourselves out to assure that he is given all, if not more, of the safeguards that the ordinary witness who has to appear enjoys. The important thing to remember is this was a separate article and must stand on its own feet. Forget the Watergate coverup, forget the abuse of power of the sensitive agencies. Are you going to impeach a guy when he asserts executive privilege and fails to produce? Here he is asserting executive privilege, he fails to produce, so instead of going thru your traditional contempt processes, you impeach him. That would never stand up.

Tape V, p12

WC - My concern was that we had, in my opinion, a fair and rather impartial investigation. Let us suppose you go back to the Johnson impeachment. You got people like Benjamin Butler leading a charge against the President, not, in my opinion, on valid grounds, but for purely political reasons. Say you have a heavy majority in Congress who is opposed to the presidential policies, whether it be impoundment or dismantling of OEO, or whatever, suddenly saying, "Here are our subpoenas, we got to bring it in or otherwise impeach you."

JM - That's the danger.

CB - Suppose you had two to one plus one. wist

RT - That is exactly the hypothesis that Raoul Berger poses in discussing judicial review. And I want to say that your position seems to me to be identical with President Ford's in the Douglas case — that impeachment is whatever you make it. Let me tell you Berger took Ford to task there.

HF - You raise a good point, just make it two to one plus one, three to one totally politically hatchet job. But first of all, we do have a standard of what constitutes an impeachable offense, and what you're saying would not measure up.

TR - You disagree with Ford, then?

WF - I also disagree with it.

HF - Secondly, to see your argument, you have this impeachable offense which is a crime against the government, the structure of the Constitution, and so forth. Clearly what you are saying it would not be that, but nevertheless, the Senate votes it, the trial held, and they convict the civil officer. Now the court of review is the people of the United States in the next election, as it is in so many of the things we do. You are posing a most extreme position, a most extreme breakdown in the civilities that are essential to our system.

WF - I agree with you, Ham. The only and final recourse is the people.

TR - Ham, you are stating the argument very well. I think it is very important.

WF - I think ^{you} could have a totally political impeachment.

TR - Sure, that's possible.

WF - When you get down to it, the system is no better than the people that are operating it. If you had even two to one plus one Republican, that could impeach a Democratic President.

CB - They would.

DG - That was Butler for the record.

LAUGHTER.

Tape V, pl2

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LAUGHTER.

Tape V, pl3

WC - I think one other point could be made so long as we are on this light note, and it's the one you made last night, Ray, that all of us thought during the course of the impeachment, how in the world could someone, who knew he was being recorded, had his own taping system set up, and having engaged in the conversations he did and they did, how could they allow the recording to take place? Then when we compare it with what we did the past day, and what we are doing now, the answer becomes rather clear: that these will never see the light of day.

LAUGHTER.

HF - I certainly want these edited before they do see the light of day.

JM - Let's don't fail to recall though, contrary to the impression that I got a moment ago, that there was a brief discussion concerning these matters in our meeting, because it involved the position of Rails and Walter with reference to whether this should be an impeachable offense, and that discussion caused Ray Thornton in effect to develop an amendment to article III, which was presented to the Democratic caucus, and I guess to the full committee when it was considered.

RT - Right, and it was adopted.

CB - It was salutary in every sense of the word. It surely did improve it.

RT - What it did, Tom, once again was to tie the right to have an article based on a failure to comply with subpoenas to two elements: one, that it was a clearly identifiable effort to get specific evidence related to an offense which was demonstrated to be an impeachable offense by other evidence.

CB - It was the finding of a jurisdictional prerequisite for impeachment. Yeah, that is a good one.

JM - I just looked at article III. I don't see that language ended up in it.

RT - Yes, it does.

JM - Yes, I see it now.

RT - It, ~~second~~, was necessary in order to resolve by direct evidence factual questions relating to presidential direction, knowledge or approval of action, demonstrated by other evidence, to be substantial grounds for impeachment.

JM - Right.

WF - Frankly, it just boggled my mind that we were going to get down to what at the time I considered a rather technical kind of legalistic approach to the matter, when we were dealing with these offenses—and in retrospect I changed my position — but then these God-awful offenses like obstruction of justice, abuse of sensitive agencies, and things that would be politically sexier by back home than failure to comply with a subpoena issued by a bunch of Democrats in the House of Representatives. And you know, how many times have you heard Eddie Ebert say, we got fifty subpoenas sitting on the Armed Services Committee, and the Congress doesn't honor subpoenas of the judicial branch, if they don't want to.

Tape V, p22

SL - I'll read it. This is a speech Ziefman gave at the University of Santa Clara, after he had been there a while.

WF - That is what made Rodino so damn mad.

SL - He divides the Members into "eagles" and "chickens," and he said that "an eagle Republican Congressman, Robert McClory, totally rejected the smoking gun theory, and became one of the principal architects of an article of impeachment based on the President's abuse of power. Mr. McClory was also the draftsman and sponsor of an article based on the President's defiance of the committee's subpoenas. Yet Mr. McClory would have failed in his efforts without the vigorous support of such Democratic eagles as Jack Brooks of Texas and John Conyers of Michigan, both of whom adamantly opposed any Democratic strategy of delay as well as any effort to weaken the subpoena power of the committee."

WC - Could you enlighten us as to what the role of Ziefman was throughout? He was always kind of in the shadows.

TR - I don't know either. What was his role?

WF - A kind of damn court jester, if you ask me.

JM - Ziefman had no substantive input into the articles or into the debate or into the organization of the debate. Rodino might have been consulting with him. Ziefman would give an opinion every now and then, but it was always rather vague.

WC - The press turned to him quite often, in terms of inside information as to what strategy was being used, what the politics were. I was just wondering if he had any real active participation.

JM - No, that I observed.

RT - Well, I think I can concur with what you have expressed. ^{He} It was not active or in any way anything other than an observer with casual comments about the conduct of the proceedings. I think he was preoccupied with the Edmund Burke impeachment matter, and I think he was of a view that the abuse of power was the central question here, and he was looking for anyone who would support that view. But I'd go one step beyond that and say, without intending to be critical, that I felt that he had his feelings hurt by not being in charge of the staff work, and that many of his actions resulted from that feeling that he had been pushed aside in this very important matter.

TR - I think you are right, without a doubt.

JM - I got the impression that he might have done some advising of Rodino on procedural matters and on publicity matters, but that's about all I could see.

RT - Yes. What's your assessment of Ziefman's role, Walter?

Tape V, p24

RT - I don't think so. It way be so, but I was really concerned when I saw article III as it appeared ready for introduction.

TR - It centered around Frank Polk.

RT - Because it did fail to tie the power of subpoena to an impeachment inquiry, I was concerned. It would have, in original form, as I recall, made the refusal to honor any congressional subpoena any time an impeachable offense, and this was so totally contrary to my views of the thing that I thought it was vital to make the change that we did make before that article was adopted. I would like to say that I did not feel at any time that there was any restraint on me to go ahead and support the theory that I had that this was an impeachable offense and that in no way was there any burden laid upon any of us to retreat or withdraw from any position we felt strongly about.

WF - I think I was more just spent, physically spent, on getting all up for one and two, that I didn't think very hard about three. I really didn't. It just didn't measure up to what we were talking about in one and two in my mind at any time.

WC - What was most offensive to me were McClory's activities all the way through, all the caucuses we had, the closed sessions and so forth, and then have him come out in favor of article III as a major proponent. And Caldwell, we'll go back to that day to the letter, when McClory was opposed to holding him in contempt, and then raised it to a level of an impeachable offense, I thought was just too hypocritical. I did not even give it any consideration other than the debate that you and I had on that day.

TR - I just like to add one thing about article II: as I see our final product, I do feel comfortable that we did have evidence as to all the numbered allegations to support our article.

JM - There is one little point that some of you can help me with. There was a crack in the coalition. And it came on article III. The little problem that developed, and I have not been able to recollect exactly what it was, but Railsback charged that there had been a breach of faith....

TR - On article IV.

RT - Article IV, the war issue, the bombing of Cambodia.

JM - But you raised it before we voted on article III. But as I voted against article III for that reason.

TR - Here is what I said, this is overkill, and in the debate on article III, I said, in all due respect to my esteemed colleague from Illinois, Mr. McClory, this is just overkill, this is not a serious offense. You [JM] didn't make up your mind on article III until the last minute, because as you were walking by, I said, "Jim, how are you going to vote on this, do you know yet?" And you said, "I think I am going to vote against it, but I just made up my mind." That is when you were going to your chair.

Tape V, p26

WF - The only thing that was fragile was our political futures!

LAUGHTER.

JM - I was partially motivated by a feeling that was probably based on Rallsback's remark that there was some breach of faith asserted with reference to....

TR - No, I never felt that at all.

RT - I didn't realize that this division had occurred.

TR - I didn't occur.

RT - I didn't think that it was either particularly fragile or for that matter really a coalition. I thought the trouble was the word "coalition." To me it implies a little more wilfulness or intention. *to combine.*

END OF TAPE V.

*we shared, and
shaped, each
others views.)*

Tape V, p7

JM - Let me engage in a little blasphemy here. You are getting very close to saying that each of us, much earlier than we have admitted to ourselves, had a feeling that Richard Nixon had to go, that the country, that our system could not tolerate the growth of power, the abuse of power, the double-dealing, the misrepresentations of which we were aware in various areas of our government. It was not specifically these two items, and that it was somewhat fortuitous, poetic justice, or what not, that a set of circumstances presented themselves which permitted us to play a role in his deposition. Now, as lawyers, however, we had the ability to not make that move without the evidence to support it. Now I wonder if that doesn't express something that we can't admit even to ourselves?

HF - As lawyers we had the ability to make that move?

JM - No, as lawyers we had the ability to evaluate the evidence so that we would not effectuate our inner feelings.

WF - Cut the cloth to fit the pattern.

JM - But not unless the evidence was there. And it was there.

TR - I disagree.

WF - I don't think I had made that judgment until the evidence was there. That final judgment was a single decision that Richard Nixon had to go in order to preserve the system. That is the judgment I made, and then I cut the cloth.

JM - I wouldn't say that any of us made a conscious judgment until the evidence was there.

HF - My approach is a little bit different, and I think I took it more like Tom did, the evidence and then the judgment, and then I asked myself, what would be the effect of impeachment? Would the country be harmed by something that may be the right course of action?

WF - But would you have then turned around and voted "No" if you had decided the country would be harmed by it?

HF - I decided that the country would not be harmed.

WF - But had you decided the other way?

HF - I never reached that point.

RT - Yes, Tom, you expressed something that I feel also, and that I had worried about early, that is, within the last two or three weeks or so before our vote and had expressed a worry even earlier: what if this case should develop so that I should become convinced as a lawyer that the evidence was sufficient to require a trial in the Senate in order to dispose of these charges, and yet I was not sure in my own mind that the result of that trial would lead to a conviction? What would happen if we were torn with the idea that we got to have a trial to clear the charges, but may not be able to get a conviction in the Senate? I worried a lot about that, but then I didn't have to make that choice.

have

to make a record, for

*except
further
its history*

RT - If you want to justify the charges of history and get worrying about your individual opportunities, I think you are flattering yourself when you think anybody would pay any attention to it. I am just glad that John Doar took the time to set out the facts, and I am sorry that he did overshoot in many instances, but I think his greatest value is in terms of history. It was a compilation of a record here that it was not an impeachment that was politically motivated, but justified by the facts. And if the facts are a little bit fictitious, that strengthens it in value rather than hurts it.

showing

And if the report presents allegations which we did not regard as

WC - But those opinions expressed are more important when you get the ten who voted against it, saying let's make it clear for history. We did not drive Richard Nixon out of office.

more active charges to

CB - Would you modify the use of the word "fictitious" and say "overdrawn"?

RT - Overdrawn, overstated.

[I would prefer to substitute the word "overdrawn" for

DS - In your absence, Mr. Mann, there just for a moment, I asked the question, what were your reactions to the final report of the Committee, and Mooney says that you had some at the time.

the word "fictitious"

TM - He had a lot of input. I think he may have drafted it!

RT - I had an input on the portion on article III.

JM - I'm looking for the conclusion of the report.

RT - The original report language did not seem to me to sufficiently establish the theory that I tried to articulate, so it was necessary to correct it.

of Caldwell's comment can also be amended

TR - I'll tell you truthfully that I don't think that the final report had much to do with this coalition. By then it was all over.

CB - My view is the same. As far as I was concerned, I was sated with the whole business.

WF - I was on the banquet circuit trying to explain what I done.

LAUGHTER.

WF - I hadn't thought about my next election until about June 27, late in the evening, and then I really did.

DS - The second item here is -- I have only two very poor copies unfortunately -- the June 28th letter of David Dennis, concerning the five minute allowance to all members to question witnesses. Did that play any part in your thinking or procedure then?

RT - Not much.

CB - I doubt if anybody paid any attention to it.

DS - Rails had said just then he thought it affected none of your tactics or votes.

TR - I don't know.

CB - That was Cohen.

TM - Yes, I think Railsback and Cohen both kind of favored that. I don't think Mann had showed up there yet, or Flowers. There was a little panic there, because you [TR] were saying "get these down," and Cohen was always rattling off facts, and Railsback rattling off facts, and they looked at me, "Mooney, you got that down?"

LAUGHTER.

TM - I thought, what the hell is going on?

WF - Froelich was there too.

TM - Then you [?] said, "Damn it, we'll stay here all night if we have to, and we'll rewrite these articles and we'll put in the specifics, to wit, and you kept it up — to wit this and to wit that, and write it down. People were running around, milling around.

WC - We had actually debated that night what we were going to do. We had to go back and face those cameras again.

WF - That's right. That was a terrifying proposition.

WC - It sure was.

TR - We didn't give it up though. We just hung in there and we just decided that we knew enough about it to hang in there.

TM - But there was some discussion about going to Rodino and say since it is 8:00 on Friday, let it stay until Monday — give us a weekend to put it together.

TR - I do remember that.

CB - He made us come back Saturday, didn't he?

RT - I wasn't there for that dinner, but as I listened ^{here, today!} it seems to me that a very significant metamorphosis was taking place right here, that the group that had come into being in order to establish a focus on the issue was metamorphosing into an advocacy.

WF - Exactly.

RT - This was what must have been ^{on} ~~lying~~ the minds of those people who were there. I was working on some specifics myself at that time and I think I didn't hear about the dinner, or I would have been there. But all of us were undergoing a transformation from deciding our views ~~and~~ ^{to} working as a group to get them ~~down~~ ^{adopted}.